Remarks

Reconsideration of the application is respectfully requested. By this communication, no amendments are made to any of the claims in view of the Office Action having been made final. Claims 1-32 are pending.

Claim Rejections - 35 U.S.C. §103

MPEP §706.02(j) states: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." (Emphasis added.)

The Examiner finally rejected all claims under 35 U.S.C. 103 as being obvious based on Wickham et al. (U.S. Patent 6,370,154) in view of Zimmermann (U.S. Patent 6,094,582). Claims 5-6 and 16 were rejected based additionally on Official Notice being taken of certain IP communications.

Re: Claim 1 & Wickham Deficiency

In the Office Action Wickham (column 21, lines 5-25; column 22, lines 10-25; column 13, lines 25-30) was alleged to teach the limitations of claim 1 reproduced below:

> "responsive to said channel being available, said switch sending a success message to said host identifying said available channel and a start time for making said data call;
> responsive to receiving said success message, said host making said data call to said destination via said available channel at said starting time."
> (emphasis added).

Wickham does not teach or suggest the limitations of claim 1 especially wherein the switch sends a success message to the host identifying a start time for making the data call. Each of the three portions of Wickham relied upon as teaching this limitation fail to provide this required teaching as explained in detail below.

Wickham, column 21, lines 5-25 provides:

> As illustrated in FIG. 15, module 174 includes a functional component 198 for selecting an STS-1 channel or time slot. Where STS-1 slots are identified by numerically ordered designations, module component 198 picks a numerically first STS-1 time slot initially and subsequently picks successive time slots as the previously picked slots are found to be unavailable. Path hunting module 174 also includes a component 200 for inquiring whether STS-1 channel or time slot selected by component 198 is available at the terminals where the selected end points are located and then at any intervening terminals. Component 200 includes functionality for identifying intermediate terminals and for generating and processing TL-1 commands or inquiries as to the availability of the selected time slot. Path hunting module 174 further includes a component 202 for generating a TL-1 command or instruction reserving an STS-1 slot for use in the intended broadband end-to-end cross-connection once that slot has been found to be available across the entire path. This reservation of the time slot is done in a sequence for successive segments along the path.

The overall objective of Wickham is to provide a craft interface device that facilitates the establishment of a broadband end-to-end cross-connection. The above quoted portion relates to FIG. 15 in which a path hunting module is described. This portion describes that successive time slots are selected and that the path hunting module can inquire whether a channel/timeslot is available at a terminal. Once available time slots are identified, an instruction is sent out reserving these time slots. This process is repeated for successive segments along the communication path.

There is nothing in this text that teaches or suggests the sending of a success message by a switch to a host identifying a start time for making a data call. This text does discuss the selection of particular time slots to carry a communication. However, the mere selection of particular time slots on which a communication will ultimately be transported has nothing to do with a start time for the making of a data call. That is, selecting particular time slots is analogous to selecting specific wired channels over which a communication will proceed, but does not require or suggest any particular timing with regard to the communication that will be carried over the path. Hence, this text does not teach or suggest sending a message from a switch to a host that identifies a start time of a data call.

Wickham, column 22, lines 10-25 provides:

> intervening node and, if so, module 174 generates a TL-1 inquiry 214 transmitted to the intervening node for determining whether the selected STS-1 slot is available for pass through at that intervening node. If the slot is not available, as determined at a junction 215 another STS-1 slot available at the first end terminal is selected in a step 216. If the slot is available, an investigation 218 is conducted as to the existence of further intervening nodes. The existence of an additional intervening node induces path hunting module 174 to generate a TL-1 inquiry in a step 220 to determine whether the selected STS-1 slot is available for pass through in this second intervening node. If the selected STS-1 slot is available at that additional node as determined at a junction 222, and in all involved terminals, a message is dispatched in a step 224 to reserve the STS-1 slot at all those terminals. As described above, this reservation process is implemented sequentially for successive segments along the path.

This text of Wickham relates to FIG. 17 in which a flow chart describes operations performed. Before discussing the specific text, the Examiner is invited to observe FIG. 17. This figure discloses the basic path hunting and reservation technique utilized to select time slots to establish an end-to-end broadband cross connection. It should be noted that none of the illustrated steps are directed to the control of communications that will be carried by the established path. There is nothing in FIG. 17 that teaches or suggests the sending of a success message from a switch to a host to identify in a start time for making a data call. That is, the establishment of a communication path by selecting particular time slots does not explicitly or implicitly teach or suggest the start time for information that will ultimately be carried by the communication path.

This quoted text is consistent with the explanation provided in the above paragraph. This text does mention that a message is dispatched in step 224 to reserve a timeslot once it has been determined that the timeslot is available. However, merely setting up a communication channel such as by identifying and reserving available time slots does not teach and is not equivalent to the sending of a success message from a switch to a host that identifies a start time for making a data call. It is well known those skilled in the art that setting up a communication path is a condition precedent to the transmission of information. However, it is equally well known those skilled in the art that the mere availability of a communication path is unrelated to the timing of the flow of information that will be ultimately transmitted over the communication path. Hence, this quoted text does not teach or suggest the transmission of a success message from a switch to a host that identifies a start time for making a data call.

Wickham, column 13, lines 25-30 provides:

> The header identifies the telecommunications system, for example, as a Litespan.TM. system containing Litespan.TM. terminals, The header contains the node name, date and time information. Analysis of this line or string seeks three blanks plus alphanumeric characters to predict the header.

The portion of Wickham that contains this quoted text discusses that an event object 88 takes a TL-1 string, analyzes it and returns an event. The header described in the quoted text comprises one possible event of the possible predefined events as shown in FIG. 14. The header is described as containing the node name, date and time information. No further information or explanation appears to be provided regarding the "date and time information" contained in the header. In view of the lack of further information concerning the date and time information, one of ordinary skill the art would assume that the date and time information refers to the time and date of the origination of the packet in which the header resides. Those skilled in the art would have such an understanding in view of the well known usage in the art of packets having headers in which the origination time and/or date of the packet is stored in the header. Such date and time information contained within headers of packets is often utilized to identify the order for delivery of information contained in the packets especially in systems where a later sent packet may arrive ahead of an earlier sent packet. The time of origination of a packet is not equivalent

to and does not suggest a success message sent from a switch to a host than identifies a starting time for making a data call. One of ordinary skill in the art, based on the teachings of Wickham, would not be led to the requirements of the present invention merely based on a mention of the transmission of packets having header that included date and time information, which would be understood to mean the point in time of origination of the corresponding packet. Thus, this text of Wickham does not teach or render obvious the sending of a success message from a switch to a host than identifies a start time or making a data call.

Each of the three relied upon text portions of Wickham is discussed above. None on these text portions supply a teaching of the sending of a success message from a switch to a host that identifies the start time for making a data call. The Zimmermann patent is not relied upon in the final Office Action regard to teaching this requirement. Therefore, the rejection of claim 1 as being obvious based on the applied references is not sustained by the teachings of the references and should be withdrawn.

Re: Claim 2 Deficiency of Wickham

Claim 2 defines the data call of claim 1 as a call which transfers a file from the host of data of known length. The Office Action specified specific lines in columns 14, 6 and 7 of Wickham as providing such a teaching. The cited text in column 14 merely discusses a field which indicates that data is continued on a following line. This has nothing to do with a file having a known length. The cited text in column 6 is directed to the display of network objects on a screen and to the generation of commands transmitted over a data link. A parser parses information from incoming data lines. Again, the cited text in column 6 provides no teaching regarding the transfer of a file having data of known length. The cited text in column 7 discusses a craft interface device in which a data check is operatively connected to memory 65 to determine "whether memory 65 is free of adequate information pertaining to an internal structure requested by the user." One of ordinary skill in the art would not understand such a statement as describing a file of data of a known length. More specifically, memory 65 is explained to be part of a domain modeling framework whose function is to represent the internal structure (objects) of a Litespan database; see column 7, lines 9-11. The "internal structure" referenced in the cited text

refers to the various objects associated with the system, not to a data file. That is, Wickham is concerned with having memory to store its objects which control the system and its operation. There is no mention or suggestion that a data file is of concern with regard to this memory. None of the cited text portions of Wickham provide a reasonable teaching of the transfer of a file from the host of data of known length.

In the Office Action it was said that, " the file length to be transferred is known in advance, the appropriate memory storage must be allocated prior to transfer." This conclusion, based on hindsight from the present application, is simply not supported by Wickham. There is no specific teaching in Wickham that can reasonably give rise to this conclusion.

It was further stated in the Office Aciton in paragraph 61 that "the file to be transferred would need to be known in advance so that appropriate storage location is made available on the receiving side." This is just not true as a general statement. For example, various ATM and other packet networks such as the Internet do not have such a requirement, i.e. total size of a file to be transferred is not required to be known in advance of the beginning of the transfer. In the case of a buffer overrun, an error is generated and the packet(s) are retransmitted. Absent a clear teaching by Wickham (which is not present) such a premise is not valid. Hence, the requirements of claim 2 are not rendered obvious based on the applied references.

Re: Claim 3 and Deficiency of Zimmermann

Claim 3 which depends on claim 2 defines the holding time of claim 1 to be equivalent to a time to transfer the file of data of known length at a first rate. It was acknowledged in the Office Action that Wickham did not teach this limitation. However, Zimmermann at column 9, lines 29-58 was alleged to provide such a teaching. The cited text describes testing conditions in which a call is transferred to a second call state upon a counter reaching a predetermined number. The text further describes the testing of a channel. A careful review of the cited text failed to disclose any reasonable teaching which could be considered equivalent to the requirement of claim 3 in which the holding time was defined as being equivalent for time to

transfer the file of data of known length at a first rate. Therefore, it is believed that claim 3 is not render obvious in view of the applied references.

Re: Claim 4 & Deficiency of Zimmermann

Claim 4 depends on claim 1 and defines the holding time of the data call as the predetermined time interval required for information to be communicated during the data call to be received by the destination from the host. In the Office Action claim 4 it was acknowledged that Wickham did not provide this teaching; Zimmermann at column 7, lines 32-50 was alleged to provide the required teaching.

Zimmermann is directed to a communication system in which it is possible for more than one call to attempt to use the same communication channel. The object of the invention, as stated in the Summary of the Invention section, is to ensure a high transmission quality for at least two calls which simultaneously attempt to use the same communication channel for transmission. This goal is sought to be accomplished by the use of multiple call states associated with various transmission parameters such that different parameters associated with each call state can be utilized during contention for the same channel by multiple calls to determine which call will have access to the channel.

Although Zimmermann does mention "holding times", it is clear based on a reading of the entire patent that holding times refers to the time a call in a given call state, and does not refer to a time required for the transmission of file of known length.

> "It may also be appreciated that a preferential selection of the **holding times** T(init) together with the setting of the predetermined transmission conditions can be performed. One basic selection would be that the predetermined transmission conditions to be satisfied in each call state makes the call more robust whenever it transmits to a call state of the higher order and that the **holding time** in each call state is the same."
> Col. 13, lines 43-50 of Zimmermann; emphasis added.

Although the phrase "holding time" appears in the above quoted language, it is important that one understand what this phrase means as used in Zimmermann. As used in Zimmermann, holding time refers to the length of time that a call has been in a given call state. See col. 12, line 65-col. 13, line 6. That is, the holding time referenced in Zimmermann refers to how long it has been since a call entered a given call state. Zimmermann does not teach or suggest the use of a time interval needed to be maintained by a network communication path in order to complete the transmission of certain user data, e.g. transmit a user's data file.

The cited text at column 7, lines 32-50 as relied upon in the Office Action does not provide a different basis from the reasonable interpretation explained above to interpret "holding time". This text recites: "...the predetermined time for which the call is held in each call state can be dependent on such a call priority indication." That is, the length of time a call is in a particular call state can vary with its assigned priority. This does not teach, as per claim 4, the holding time of the data call is the predetermined time interval required for information to be communicated during the data call to be received by the destination from the host. No person of ordinary skill in the art would understand Zimmermann to provide this teaching. Hence, Zimmermann and Wickham do render claim 4 obvious.

Independent method claim 8 is believed to be allowable for reasons discussed above.

Independent apparatus claim 18 is likewise believed to be allowable for reasons discussed above with regard to claim 1.

Allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at the indicated telephone number.

Respectfully submitted,

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